IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2020 OF 2004

M/s. Gayatri Automation and anr. ...Petitioners
V/s
State of Maharashtra and anr. ...Respondents.

ALONG WITH
CRIMINAL WRIT PETITION NO. 2021 OF 2004

M/s. Gayatri Automation and anr. ...Petitioners.
V/s
State of Maharashtra and anr. ...Respondents.

ALONG WITH
CRIMINAL WRIT PETITION NO. 2022 OF 2004

M.D. Rangnath ...Petitioner.
V/s
State of Maharashtra
and anr. ...Respondents.

ALONG WITH
CRIMINAL WRIT PETITION NO.2023 OF 2004

M.D. Rangnath ...Petitioner.
V/s
State of Maharashtra
and anr. ...Respondents.

Mr. Surel S. Shah for the petitioners.
Mr. M.K. Kochavekar i/b M/s Mulla & Mulla & Co. for the respondent No.2.
Mr. A.S. Shitole, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 29TH APRIL, 2005

P.C.:

1. Heard the learned Counsel for the petitioners and the learned Counsel for respondent No.2.

2. Petitioners are challenging the order of issuance of process passed by the J.M.F.C., Pimpri on a

complaint filed by respondent No.2 under section 138 of the Negotiable Instruments Act.

3. It is submitted by the learned Counsel appearing on behalf of the petitioners that the Petitioners are the authorized dealers of respondent No.2 - Company and during 20/1/2001 to 2/6/2002, various orders were placed by the petitioners with respondent No.2 - Company for purchase of two wheelers and spare parts to the tune of Rs 4,26,27,030/-. According to the petitioners, they paid the said amount between 11/1/2001 to 29/6/2002. It is submitted that after the payment was made, no amount was due and payable to respondent No.2. However, respondent No.2 - Company misused the blank cheques which were given as security towards the invoice which were dishonoured and, thereafter, the present complaint has been filed. It is submitted that the demand notice which was issued by the complainant was beyond the statutory period and, therefore, the complaint was liable to be dismissed. It is further submitted that there was no averment in the complaint that the petitioners had received statutory demand notice and, therefore, the complaint is liable to be dismissed. It is further submitted that, in the complaint, there is no averment that the notice was received on a particular day and

in the absence of this specific averment, the complaint was liable to be dismissed. It is further submitted that there was no legally enforceable debt or liability and that the cheques had been misused and, on that count also, the complaint was liable to be dismissed.

4. I have perused the complaint and the verification. In my view, there is no merit in the submissions made by the learned counsel appearing on behalf of the petitioners. In the complaint, specific averments are made regarding the delivery of the spare parts and other goods to the accused. There is also a specific averment that the cheques which were issued towards the payment of the said liability were dishonoured. It will not be possible to decide all the issues raised by the petitioners in this petition as they are questions of fact which can only be decided by the trial court after evidence is adduced by both the parties. The Supreme Court in the case of V. Raja Kumari V. P. Subbarama Naidu and another reported in **AIR 2005 SC 109** has observed that the complaint cannot be dismissed at the threshold on the ground that there was no proper service of notice and this question has to be decided during trial. The Supreme Court has taken this view after taking into consideration the

earlier judgements of the Supreme Court. Thus, there is no merits in the submissions made by the learned Counsel for the petitioners.

5. Accordingly, all the above Criminal Writ Petitions are dismissed. Trial Court is directed to proceed with the trail as expeditiously as possible and, in any case within a period of six months.

V.M. KANADE, J.